



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0329]

RIN 1625-AA00

Safety Zones; Marine Events in Captain of the Port Long Island Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish four temporary safety zones for three fireworks events and one swim event within the Captain of the Port Long Island Sound Zone. This action is necessary to provide for the safety of life on navigable waters during these events. The safety zones will facilitate public notification of these events and provide protective measures for the maritime public and event participants from the hazards associated with these events. Entering into, transiting through, remaining, anchoring or mooring within these regulated areas would be prohibited unless authorized by the Captain of the Port Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468-4559, Scott.A.Baumgartner@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara

Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is

received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0329] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0329) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West

Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

There are four separate marine events addressed by this temporary regulation. The Brookhaven Memorial Hospital fireworks display and the Baker Family Celebration fireworks display are first time events with no regulatory history. The Village of Saltaire fireworks display and the Riverhead Rocks

Triathlon were both held the previous year and had separate safety zones established by a temporary final rule entitled "Special Local Regulations and Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone". This rulemaking was published on July 10, 2013 in the Federal Register (78 FR 41300).

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule is necessary to promote the safety of life on navigable waterways within the COTP Long Island Sound Zone during these events.

D. Discussion of Proposed Rule

This temporary rule proposes to establish four safety zones for three fireworks displays and one swim event. This rule will be effective from 8:30 p.m. on August 2, 2014 to 10:30 p.m. on August 30, 2014.

The events covered by this regulation will be enforced on the respective dates and times listed in the table below. If any of the events are cancelled due to inclement weather, then

this regulation will be enforced on rain dates listed in the table below.

Fireworks Displays		
1	Village of Saltaire Fireworks	<ul style="list-style-type: none"> • Date: August 2, 2014. • Rain Date: August 30, 2014. • Time: 8:30 p.m. to 10:30 p.m. • Location: All waters of Saltaire Bay near Saltaire, NY within 600 feet of the fireworks barge located in approximate position 40° 38' 37.72"N, 073° 11' 58.52"W (NAD 83).
2	Brookhaven Memorial Hospital Fireworks	<ul style="list-style-type: none"> • Date: August 9, 2014. • Rain Date: August 10, 2014. • Time: 8:45 p.m. to 10:45 p.m. • Location: All waters of Bellport Bay near Bellport, NY within 600 feet of the fireworks barge located in approximate position 40° 45' 09.22"N, 072° 55' 44.78"W (NAD 83).
3	Baker Family Celebration Fireworks	<ul style="list-style-type: none"> • Date: August 16, 2014. • Rain Date: August 17, 2014. • Location: All waters of Flanders Bay near Jamesport, NY within 600 feet of the fireworks barge located in approximate position 40° 55' 51.84"N, 072° 35' 07.92"W (NAD 83).
Swim Event		
4	Riverhead Rocks Triathlon	<ul style="list-style-type: none"> • Date: August 3, 2014 • Time: 6:20 a.m. to 8:30 p.m. • Location: All waters of the Peconic River, Riverhead, NY within the area bounded to the west by a line connecting points at 40° 54' 58.09" N 072° 39' 37.56" W on the northern bank and 40° 54' 56.74" N 072° 39' 37.56" W on the southern bank and bounded to the east by a line connecting points at 40° 55' 01.92" N 072° 38' 51.08" W on the northern bank and 40° 54' 59.15" N 072° 38' 51.08" W on the southern bank (NAD 83). All positions are approximate.

The fireworks displays listed above are expected to attract large numbers of spectator vessels that will congregate around the location of these events. A regulated area, specifically a safety zone, is required for each of these fireworks displays to protect both spectators and participants from the safety hazards created by them, including unexpected pyrotechnics detonation and burning debris. The Riverhead Rocks Triathlon incorporates swim legs that will place many swimmers in the navigable waters of the Peconic River. A regulated area is required to minimize the hazards posed by spectators and other waterway users operating their vessels in close proximity to the event participants. The safety zone established for this swim event will minimize the risks to the event participants from this type of boat traffic and improve visibility and maneuverability for the safety vessels supporting the swim event.

This rule would prevent vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP or designated representative.

Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners.

E. Regulatory Analyses

We developed this proposed rule after considering numerous

statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated areas will be of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Vessels requiring entry into the regulated areas may be authorized to do so by the COTP or designated representative.

Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during the periods of enforcement from August 2, 2014, 2014 to August 30, 2014.

This temporary special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated areas are of short duration, vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas, and vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative.

Additionally, before the effective period, public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C.

3501-3520.) .

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of four safety zones. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We

seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T01-0329 to read as follows:

§ 165.T01-0329 Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone

(a) Regulations. The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the events listed in the TABLE 1 of § 165.T01-0329. These regulations will be enforced for the duration of each event.

(b) Enforcement Period. This rule will be enforced on the dates and times listed for each event in TABLE 1 of § 165.T01-0329. If

the event is delayed by inclement weather, the regulations will be enforced on the rain date indicated in TABLE 1 of § 165.T01-0329.

(c) Definitions. The following definitions apply to this section:

- (1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.
- (2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.
- (3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) Spectators. Spectators desiring to enter or operate within the regulated areas should contact the COTP or the designated

representative via VHF channel 16 or by telephone at (203) 468-4401 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(e) Enforcement. Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) Locations. The regulated area for all fireworks displays listed in the TABLE 1 of § 165.T01-0329 is that area of navigable waters within a 600 foot radius of the launch platform for each fireworks display. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS-STAY AWAY." This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

(g) Separation. For the swim event listed in TABLE 1 to §165.T01-0329, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.

TABLE 1 to §165.T01-0329

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Dated: May 13, 2014.
E. J. Cubanski, III,
Captain, U. S. Coast Guard,
Captain of the Port Sector Long Island Sound.

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Date: 05/29/2014]